



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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January 10, 2022

Lauren F. Carroll  
Deputy County Counsel  
400 County Center, 6th Floor  
Redwood City, CA 94063

Re: Your Request for Advice  
**Our File No. A-21-151**

Dear Ms. Carroll:

This letter responds to your request for advice regarding conflict of interest disclosure provisions of the Political Reform Act (the “Act”).<sup>1</sup>

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

### QUESTION

Is the San Francisco International Airport/Community Roundtable (“Roundtable”) a public agency required to develop a conflict of interest code and are the members required to file Statements of Economic Interests (“SEIs”)?

### CONCLUSION

Yes. The Roundtable is required to adopt a conflict of interest code and its members must file SEIs because they have decisionmaking authority within the meaning of Section 82019 and Regulation 18704(a), as the Roundtable has the authority to budget its allocated funds as well as the authority to expend and disburse the funds.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18109 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

## FACTS AS PRESENTED BY REQUESTER

Your office represents the San Mateo County Planning and Building Department (“Department”), and the Department provides staff support to the San Francisco International Airport/Community Roundtable (“Roundtable”). You request that the FPPC reconsider prior advice in the *Rodriguez* Advice Letter; No. A-21-024, finding that the Roundtable members are subject to the Act’s conflict of interest code requirements.

The Roundtable is a committee whose purpose is to address the community noise impact of aircraft operations at San Francisco International Airport (“SFO”). SFO is owned and operated by the City and County of San Francisco, though it is located entirely within the unincorporated area of neighboring San Mateo County (the “County”). The authority to control aircraft in flight and on the ground is vested exclusively in the Federal Aviation Administration (“FAA”). The Roundtable was created in 1981, pursuant to a Memorandum of Understanding (“MOU”) between San Francisco, the County, and several cities and towns located near SFO, with the goal of reducing aircraft noise impact on the surrounding neighborhoods and communities.

We note that there are currently 23 members, who are elected or appointed officials from the constituent cities, towns, counties, and government entities, and file their Form 700 pursuant to the requirements of their respective agencies.<sup>2</sup> All Representatives and Alternates who serve on the Roundtable must be elected officials (i.e., Council Members, Supervisors, etc.) from the agencies/bodies they represent and serve at the pleasure of their appointing agency/body, except Representatives and Alternates from the City and County of San Francisco Mayor’s Office, the City and County of San Francisco Airport Commission, and the City/County Association of Governments of San Mateo County Airport Land Use Committee. Staffing is provided by San Mateo County, and funding is from the Membership dues, and San Francisco Airport Commission thru the City-County of San Francisco.

Funding comes from the member agencies and is kept in a trust held by the County. The County also provides staff support to the Roundtable. The Roundtable and its standing subcommittees abide by the requirements of the Brown Act.

The Roundtable serves as a community forum for conversations about aircraft noise mitigation among the aviation industry, the FAA, SFO management, and local governments. However, the Roundtable does not itself have authority to adopt or implement noise mitigation measures. The Roundtable cannot and does not direct the FAA, SFO, or local governments to take certain actions, nor does it regulate the aviation industry. Neither the FAA nor SFO are obligated to accept Roundtable recommendations.

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<sup>2</sup> Current membership consists of the: City and County of San Francisco Board of Supervisors, City and County of San Francisco Mayor’s Office, City and County of San Francisco Airport Commission, County of San Mateo Board of Supervisors, City/County Association of Governments of San Mateo County Airport Land Use Committee, Town of Atherton, City of Belmont, City of Brisbane, City of Burlingame, City of Daly City, City of Foster City, City of Half Moon Bay, Town of Hillsborough, City of Menlo Park, City of Millbrae, City of Pacifica, Town of Portola Valley, City of Redwood City, City of San Bruno, City of San Carlos, City of San Mateo, City of South San Francisco, and Town of Woodside.

The Roundtable adopts its own budget every year. In the current fiscal year, 2021-22, the Roundtable's budget is \$301,999. Expenses include County staff support, aviation consultant services, conference attendance, subscription services, website maintenance, video services for recording and broadcasting meetings, cash reserves, and other minor administrative costs. The Roundtable's aviation consultant, though paid for with Roundtable funds, contracts with the County, and this contract requires Board of Supervisors approval.

In a follow up email, you provided additional information regarding the scope of work for the aviation consultant. The County's contract outlines the scope of work in detail. It also specifies that the work will be directed and supervised by the Roundtable Coordinator, who is a County employee and not a Roundtable member. The County writes the aviation consultant job description, advertises for the position, and conducts interviews (although panelists are combined County staff and Roundtable members), and the contract is with the County not the Roundtable directly.

You stated that the Roundtable does make decisions concerning its own budget, and provided additional detail on this process. Roundtable members debate and vote on a budget annually, and the budget is broken down by particular expenses. As the decisions on latest budget vote (June 2021) indicate, this process includes allocations for the operation of the Roundtable website, printing services, and videography. This includes a contract with Millbrae Community TV for videography and live cable casting for virtual and/or in-person meetings. The Roundtable also pays for staff support; although the staff members are all County employees, hired and fired by the County. You have confirmed that the decisions about which vendors to use for goods and services are made by the support staff.

### *Roundtable Recommendations*

In a follow-up email, you provided examples to demonstrate that the Roundtable's decision-making authority is somewhat limited, and relevant public agencies – chiefly the FAA, SFO, and various local governments – do not routinely approve the Roundtable's recommendations regarding airport operations without vetting and modification.

In 2015, the FAA launched an "Initiative to Address Noise Concerns of Santa Cruz/Santa Clara/San Mateo/San Francisco Counties." Throughout this initiative, the Roundtable and a similar but separate body (the Select Committee for South Bay Arrivals) made a number of specific recommendations to the FAA. The Roundtable's recommendations covered topics such as directions for take-off from certain runways, flight paths on approach, potential research opportunities, pilot education, and expectations for Roundtable involvement. You note that FAA's "Phase Two" report, published in 2017, provides a clear example of the FAA directly responding to Roundtable recommendations. Of the proposals contained in Roundtable reports, the FAA concluded:

- For 12 proposals, the FAA found that it had already addressed the concern.
- 11 proposals were feasible.
- 39 proposals remained under evaluation.
- 3 proposals were not endorsed by the FAA.
- 4 proposals were outside FAA jurisdiction.

According to Roundtable staff, some of the proposals that the FAA found potentially “feasible” during this phase of the initiative were later determined to be infeasible and never implemented. Additionally, some of the proposals are still under discussion today, several years later. This demonstrates that the FAA is not inclined nor obligated to accept Roundtable recommendations, without its own extensive vetting.

In March of this year, the Roundtable asked the FAA to, among other things, require less-disruptive flight paths for all flights between midnight and 6 a.m. The FAA considered the suggestion and countered that it may be able to accommodate that request, but only between 1 a.m. and 5 a.m.

In August of this year, the Roundtable’s Ground-Based Noise Subcommittee recommended actions to the FAA that the Roundtable believes would reduce ground noise. The FAA has acknowledged the letter but has not responded to the specific proposals. In 2020, the Airport purchased a new “Ground Based Augmentation System,” which is a program designed to improve the accuracy of an aircraft’s Global Positioning System (GPS). Although this new system could affect aircraft noise, the Airport did not, nor was it obligated to, consult the Roundtable before making the purchase. After the fact, the Airport agreed to brief the Roundtable on the system and provide additional noise monitoring to assess whether the new system had any effect. But the Roundtable could not veto the Airport’s purchase.

You state that the Roundtable is not a unique body; community roundtables exist nationwide to work with the FAA on local airport noise issues. An informational sheet explains that “the FAA looks to the roundtable to make recommendations,” but those recommendations must be thoroughly vetted. The FAA must determine if the proposal is “feasible and flyable, from a safety and efficiency perspective,” “conduct mandated environmental and safety reviews,” and assess whether sufficient resources are available to implement the change.<sup>3</sup>

## ANALYSIS

The Act prohibits a public official from making or participating in making a governmental decision in which the official knows or has reason to know he or she has a financial interest. (Section 87100.) The conflict-of-interest provisions of the Act apply only to “public officials.”

In furtherance of this prohibition, the Act requires every state and local government agency to adopt a conflict of interest code. (Section 87300.) A conflict of interest code enumerates the positions within the agency that make or participate in making decisions that may have a foreseeable and material effect on any financial interest. (Section 87302(a).)

A “local government agency” is defined in the Act as “a county, city, or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.” (Section 82041.) As previously determined in the *Rodriguez* Advice Letter, No. A-21-024, the Roundtable is a local government agency for purposes of the Act.

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<sup>3</sup> See, [https://www.faa.gov/air\\_traffic/community\\_engagement/media/FAA\\_Community\\_Roundtable\\_Info\\_Sheet.pdf](https://www.faa.gov/air_traffic/community_engagement/media/FAA_Community_Roundtable_Info_Sheet.pdf).

Section 87302(a) requires that a conflict of interest code specify the economic interests public official's must report on their SEIs. Section 82048 defines "public official" as every member, officer, employee or consultant of a state or local government agency. Further defining "public official," Regulation 18700(c)(2) excludes from the definition of "member" individuals on bodies lacking decision making authority as follows:

(2) "Member" does not include an individual who performs duties as part of a committee, board, commission, group, or other body that does not have decisionmaking authority

(A) A committee, board, commission, group, or other body possesses decisionmaking authority whenever:

(i) It may make a final governmental decision;

(ii) It may compel or prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden; or

(iii) It makes substantive recommendations and, over an extended period of time, those recommendations have been regularly approved without significant amendment or modification by another public official or governmental agency.

(B) A committee, board, commission, group, or other body does not possess decisionmaking authority if it is formed or engaged for the sole purpose of researching a topic and preparing a report or recommendation for submission to another public official or governmental agency that has final decisionmaking authority, and does not meet any of the criteria set forth in subsection (2)(A)(i-iii).

Public officials designated in the conflict of interest code are referred to as "designated employee." A "designated employee" includes any "officer, employee, member, or consultant" of an agency whose position involves making or participating in making decisions which may have a foreseeable material effect on any financial interest. (Section 82019(a)(3).) A "designated employee" does not include an unsalaried member of any board or commission that serves a solely advisory function. (Section 82019(b)(1).) Lastly, Section 87302(b) requires designated employees to file SEIs at times and under circumstances as specified.

The threshold inquiry in determining if the Act requires the members of the Roundtable to file SEIs is whether those members are public officials who will be making, participating in making, or influencing a governmental decision. Relevant to your inquiry, Regulation 18704 includes definitions for "making a decision," and "participating in a decision." "A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency." (Regulation 18704(a).) "A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review." (Regulation 18704(b).)

Thus, a committee, board, or commission may be deemed to have decisionmaking authority whenever it has the ability to (1) make a final decision, (2) compel or prevent a decision, or (3) make substantive recommendations that are, over an extended period, regularly approved without significant amendment or modification. If the Roundtable has decisionmaking authority under any of these tests, its members would be considered public officials who must file SEIs. Alternatively, if the Roundtable does not have decisionmaking authority, its members are not considered public officials under the Act and are not required to file SEIs as a result of their membership in the Roundtable.

According to the information you have provided, the Roundtable considers itself an advisory body. However, this is not determinative of whether the Roundtable exercises decision making authority. Although you have provided numerous examples of instances where the FAA has rejected or taken no action on recommendations made by the Roundtable, the analysis of whether the Roundtable exercises decision making authority is not limited to its role in making recommendations regarding airport operations to other governmental agencies. As noted above, decision making authority exists under Regulation 18704(a) where an official authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency

In prior advice, we have enumerated the kinds of authority that suggest when an advisory body makes governmental decisions. Previously considered factors include: the authority to (a) adopt rules, rates and regulations for the administration and management of an agency; (b) enter into contracts with other entities; (c) hire or fire personnel or consultants; or (d) purchase supplies. (*Calabrese* Advice Letter No. I-08-067; *Petzold* Advice Letter No. A-89-591; *Ewing* Advice Letter No. A-89-480; *Amen* Advice Letter No. A-88-304; *Glacken* Advice Letter No. I-92-265). Advisory Boards exercise decisionmaking authority regarding the disbursement of funds.

Here, the Roundtable makes and votes on decisions concerning its own budget, and these decisions obligate and commit the Roundtable in regard to its permissible expenditures. Members debate and vote on a budget annually, and the budget is broken down by particular expenses. The Roundtable sets its own budget for the amount they will spend on and allocate toward goods and services. This process includes allocations for the operation of the Roundtable website, printing services, and videography, as well as payroll for staff. As such, the Roundtable makes budgetary decisions regarding its allocated funds as well as decisions regarding the expenditure or disbursement of public funds.

Based on the information provided, the Roundtable has decisionmaking authority under Regulation 18704(a), and is therefore required to adopt a conflict of interest code, and its members are required to file SEIs as a result of their membership in the Roundtable.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge  
General Counsel

*Zachary W. Norton*

By: Zachary W. Norton  
Senior Counsel, Legal Division

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